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IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY REQUEST FOR APPROVAL OF UPDATED GREEN POWER RATE SCHEDULE GPS-1, GPS-2 AND GPS-3.	DOCKET NO. E-01345A-10-0394
IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR APPROVAL OF ITS 2013 RENEWABLE ENERGY STANDARD IMPLEMENTATION FOR RESET OF RENEWABLE ENERGY ADJUSTOR.	DOCKET NO. E-01345A-12-0290
IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS 2013 RENEWABLE ENERGY STANDARD IMPLEMENTATION PLAN AND DISTRIBUTED ENERGY ADMINISTRATIVE PLAN AND REQUEST FOR RESET OF RENEWABLE ENERGY ADJUSTOR.	DOCKET NO. E-01933A-12-0296
IN THE MATTER OF THE APPLICATION OF UNS ELECTRIC, INC. FOR APPROVAL OF ITS 2013 RENEWABLE ENERGY STANDARD IMPLEMENTATION PLAN AND DISTRIBUTED ENERGY ADMINISTRATIVE PLAN AND REQUEST FOR RESET OF RENEWABLE ENERGY ADJUSTOR	DOCKET NO. E-04204A-12-0297

Arizona Corporation Commission
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REPLY BRIEF

OF TUCSON ELECTRIC POWER COMPANY

AND UNS ELECTRIC, INC.

RE "TRACK AND RECORD"

SEPTEMBER 13, 2013

TABLE OF CONTENTS

Tucson Electric Power Company and UNS Electric, Inc. ("Companies"), through undersigned counsel, respectfully submits their Reply Brief in this matter.

I. INTRODUCTION.

The Companies maintain their position as stated in their Initial Post-Hearing Brief. The record supports: (1) adopting Track and Monitor at the end of this proceeding as the best short-term solution; and (2) reopening the Renewable Energy Standard and Tariff Rules ("REST Rules") for the express purpose of removing the annual Distributed Renewable Energy Requirement ("DE requirement") under A.A.C. R14-2-1805.

Staff's Track and Monitor proposal is the best solution in short-term – as it best fits within the framework of the REST Rules. The concerns expressed by other parties with the Track and Monitor proposal are unfounded. As set forth below (and in the Companies' Initial Post-Hearing Brief), Track and Monitor does not result in double counting of Renewable Energy Credits ("RECs") as defined by the REST Rules. Opponents continue to misinterpret how Track and Monitor will operate. Moreover, the evidence clearly demonstrates that: (1) customer choice and not utility incentives drive the market for distributed renewable energy ("DE"); and (2) a growing vibrant voluntary DE market exists in Arizona. Thus, because there remains little reason to maintain the DE requirement, the Arizona Corporation Commission ("Commission") should reopen the REST Rules to eliminate it.

II. RESPONSE TO PARTIES' INITIAL BRIEFS.

1. Response to Staff.

A. The Companies support Staff's argument regarding Track and Monitor as the superior solution to approve of in this proceeding.

The Companies continue to support Track and Monitor as the best short-term solution when incentives are no longer necessary. The Companies agree with Staff that the issue in this case is narrow and the time to resolve it is now. As the Companies explained extensively in their brief – Track and Monitor works by adjusting the REST requirement for each utility on a kWh-per-kWh basis for energy produced by distributed renewable generation where no RECs are

transferred. Track and Monitor meets all five of Staff's policy goals.

Further, because the utilities would not claim any RECs or "renewable attributes" not transferred to them to meet the DE requirement, no double-counting concerns exist.[1] Staff is correct that the RECs not transferred would remain with the owner and utilities would not use those RECs (or the associated kWhs) for compliance.[2] The criticisms of Track and Monitor from the Center for Resource Solution ("CRS") is unfounded in part because CRS presides over a voluntary market, and not any compliance market like in Arizona.[3] Still, Staff and the utilities will be able to track actual kWh production from DE facilities, and have quantitative data on the amount of DE generated in their respective service territories. Also, the Companies agree with Staff that Track and Monitor should lower costs to ratepayers.

Moreover, the Companies support Staff's "backup" Track and Monitor proposal should the Commission continue to have concerns regarding double-counting. Staff's modification would waive the full DE requirement on a year-to-year basis. As the Companies stated in their Initial Post-Hearing Brief, any full waiver of the DE requirement will resolve concerns regarding double counting.[4] Staff's criticisms of other parties' proposals are sound, and the Companies join Staff in those criticisms.

Finally, the Companies understand Staff's reticence regarding permanently eliminating the DE requirement from the REST Rules. But the Companies believe that eliminating the DE requirement meets the remaining four policy goals. Further, utility incentives are no longer the driving force for DE and a growing, strong voluntary DE market already exists.[5] Finally, the evidence shows having a separate "DE carveout" will continue to be more costly to ratepayers as DE continues to be more expensive than utility-scale generation.[6] The Companies support Track and Monitor as the solution the Commission should approve now; but the Commission should find

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[1] See Companies Initial Post-Hearing Brief at 9-13 for their extensive discussion of why Track and Monitor does not double count.
[2] See Staff's Opening Brief (August 27, 2013) at 8.
[3] Companies Initial Post-Hearing Brief at 13.
[4] Companies Initial Post-Hearing Brief at 8.
[5] The Companies discuss these reasons in depth in their Initial Post-Hearing Brief at 26-29.
[6] Tr. (Tilghman) at 265.

a permanent solution by also ordering the REST Rules be reopened and eliminating the DE requirement.

2. Response to Arizona Public Service Company ("APS").

A. The Companies agree that CRS's statements and potential actions should not dictate what is best for ratepayers in Arizona.

The Companies share APS's concern about a California non-profit dictating Arizona policy. The Companies also agree that the wait and see approach solves nothing; especially since the disappearing cash incentives issue is facing the Commission now.[7] The Companies join APS in its criticisms of RUCO's Baseline proposal, as well as the Vote Solar Initiative ("VSI") standard-offer proposal and the Western Resource Advocates ("WRA") reverse auction proposal.

3. Response to Federal Executive Agencies and Department of Defense ("DoD").

A. Track and Monitor would preserve the significant DoD DE facilities' investments in Arizona.

The Companies understand DoD's need to preserve the integrity of its RECs, and does not take issue with its need – or the needs of both the Department of Veteran Affairs and the U.S. Army's Energy Initiatives Task Force – to comply with the Energy Policy Act of 2005 or Executive Order 13423. The Companies also recognize the contributions DoD agencies have made in Arizona. Indeed, neither TEP nor UNS Electric wants to take any action to jeopardize DoD projects in Arizona. All that stated, and as the Companies have explained, Track and Monitor does not allow the utilities to claim RECs without actually acquiring those RECs.

The Companies further agree that the wording must be carefully crafted to ensure utilities do not claim "renewable attributes" they have not acquired.[8] Further, the intent is to apply Track and Monitor prospectively when cash incentives are not necessary to drive the DE market.

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[7] Companies Initial Post-Hearing Brief at 18-19, noting that both TEP and UNS Electric proposed options with no DE incentives in their respective 2014 REST Plans (see FN 77).

[8] The Companies Initial Post-Hearing Brief explains why Track and Monitor is not double-counting RECs on pages 9-13. In particular, the Companies indicate that the wording could resolve any confusion such as Mr. Huber's suggestion that the wording could be something like "1,000 kWh hosted on [a utility's] grid that [it] does not own the attributes to." See Rebuttal Testimony of Lon Huber at 4.

Renewable energy would *not* be used to meet Arizona's DE requirement and the utility would not be claiming the renewable attributes from DE absent acquiring the RECs.[9] Thus, Track and Monitor, by design, would not allow any claims on RECs or "renewable attributes" not acquired.

4. Response to RUCO.

A. The "Baseline" proposal is vague and ambiguous – as the evidence demonstrates.

The Companies maintain that RUCO's "Baseline" proposal is fraught with problems, as detailed in their Initial Post-Hearing Brief.[10] By not recommending a specific threshold, RUCO's approach would lead to more technical conferences, more workshops and likely more hearings to attempt to determine an appropriate threshold. Further, RUCO's proposal does not provide for a direct link between renewable energy deployed in Arizona and compliance with the REST Rules. It is difficult to see how the "Baseline" proposal can fit neatly into utilities' implementation plan timelines when even RUCO provides little detail on how to establish the threshold, for example. Compared to Track and Monitor, the "Baseline" proposal is more complicated, will take more time to implement, and provides significantly less certainty.[11]

B. Adopting Track and Monitor would not be an unlawful taking of any property right, assuming one exists.

While not the only party to do so, RUCO apparently assumes that there is some inherent property right in what is essentially an accounting mechanism. The Companies do not agree with this assumption – and know of no case law that has bequeathed a "property right" to the type of REC defined by the REST Rules. Moreover, the Commission did not make any finding in Decision No. 67127 (November 14, 2006), which approved the REST Rules, to confer a property right in the RECs. But even if a property right were to exist in such a REC, Track and Monitor (or

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[9] Responding to DoD's Brief at 4 citing the Renewable Energy Requirement Guidance for EPAct 2005 and Executive Order 13423 of what is double-counting (admitted as DoD/FEA Ex. 4 during the hearings).

[10] RUCO all but abandons its "50/50 proposal" so the Companies will not address it specifically here. Even so, the Companies remain opposed to that proposal as well.

[11] See the Companies Initial Post-Hearing Brief at 21-22 for their more extensive criticism of the RUCO "Baseline" proposal.

any other solution) does not result in an unlawful taking of private property. RUCO cites to *Scheehle v. Justices of Supreme Court of Arizona* as support for its argument; but RUCO appears to doubt its own argument, acknowledging that its argument "would be difficult to make and subject to different interpretations."[12] Indeed, the U.S. Supreme Court has stated that a mere diminution in value without more is not a taking.[13] The Commission is not unlawfully impeding any property rights by adopting Track and Monitor when advancing the legitimate state interest of achieving renewable energy goals through the most cost-effective means – and disagree with any implication by RUCO to the contrary.

C. RUCO misinterprets Track and Monitor.

Finally, RUCO states that Track and Monitor "explicitly counts kWhs toward compliance and explicitly lowers the REST by the exact amount of counted kWhs."[14] This is inaccurate. Track and Monitor does not permit a utility to count kWhs toward compliance absent acquiring the RECs. Rather, Track and Monitor reduces the compliance target by the amount of kWhs generated from renewable resources where the utility did not acquire the RECs – as Staff stated on several occasions.[15]

5. Response to Western Resource Advocates and Vote Solar Initiative.

A. The Commission should not adopt either a standard offer or reverse auction process as both are costly and complicated.

The Companies maintain that neither VSI's standard offer proposal nor WRA's reverse auction proposal should be adopted – because both are too costly and create an artificial market that require ratepayer funds to drive compliance.[16] WRA and VSI argue that acquiring RECs

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[12] See RUCO's Closing Brief at 9.
[13] The Companies cited *Lucas v. South Carolina Coastal Council* in its Initial Post-Hearing Brief as support for this point. But see also *Penn. Cent. Transp. Co.* 438 U.S. 104, 124 quoting *Pennsylvania Coal Co. v. Mahan*, 260 U.S. 393 413 (1922) ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law") and 130-31 (stating that the focus should be on the character of the government action as well as the nature and extent of the interference to the whole.)
[14] See RUCO's Closing Brief at 7.
[15] See e.g. Robert Gray Direct Testimony at 7-8.
[16] See Companies Initial Post-Hearing Brief at 23-24.

would be a small expense for utilities.[17] But no matter the magnitude of the expense, customers should not have to pay any more than necessary for a DE market where customer choice is the primary driver independent of any incentives offered.[18] Again, Mr. Berry for WRA as well as Mr. Huber for RUCO testified that customers are pursuing DE for reasons other than utilities offering incentives.[19] Thus, expending time and resources to put together a reverse auction or standard offer process is unnecessary.

Further, even WRA and VSI concede that developing the specifics of an auction would require yet another "collaborative process" as well as an annual review of budgets – possibly involving additional technical conferences.[20] Further, VSI's standard offer would involve a separate process every three months and dusting off a seven-year old draft report (the 2006 UCPP report). So neither a reverse auction nor a standard offer is as simple or as harmonious with the REST Rules as WRA and VSI would have the Commission believe.

B. CRS should not have the last word as to renewable energy policy in Arizona.

Both WRA and VSI appear to believe that CRS's standard should dictate the Commission's REST Rules compliance policies because it addresses the double counting issue. However, as stated numerous times, Track and Monitor would not double-count RECs. Also, Track and Monitor would not transfer RECs to the utilities in violation of A.A.C. R14-2-1803. Staff's witness Robert Gray testified that the RECs remain with the system owner under Track and Monitor if not sold by the system owner.[21] Further, if CRS refuses to certify RECs because of Track and Monitor, then it is CRS that is directly depriving system owners of value. CRS should not dictate the Commission's determination as to the most cost-effective means to advance renewable energy goals in Arizona.

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[17] See VSI / WRA Opening Brief at 5.
[18] See Tr. (Tilghman) at 211, 276-77; Tr. (Bernovsky) at 76.
[19] Tr. (Berry) at 461; Tr. (Huber) at 592.
[20] VSI / WRA Opening Brief at 12-13.
[21] See Robert Gray Direct Testimony at 7-8. The Solar Electric Industries Association ("SEIA") also makes the same argument as WRA and VSI.

C. Track and Monitor does not impede any so-called property rights in the RECs.

WRA and VSI also misrepresent what RECs actually are. They are merely an accounting mechanism. They are not equivalent to development rights on parcels of land. They are a creation solely of regulation. Therefore, adopting Track and Monitor would not constitute an unlawful taking of any private property right.

6. Response to Solar Industries Electric Association (SEIA).

A. Simply waiting until the issue becomes a problem is not a solution.

SEIA would have the Commission do nothing at this time (except perhaps grant a one-year waiver). SEIA's recommendation to simply wait is inappropriate. APS and the Companies have met many of the annual DE requirements for several years;[22] so there is no reason why they should continue to use ratepayer funds for incentives. Yet SEIA wants utilities like APS and the Companies to simply charge ratepayers so that incentives can continue to be offered.

The Companies actually agree with SEIA that the DE requirement was a success. The "DE carveout" has done its job. But as incentives disappear and as utilities are far less involved in customers' decision-making to pursue DE, the utilities should not be bound to meet a requirement it has little control over. Mr. Tilghman, testifying for the Companies, cited to specific instances where customers are opting *not* to take incentives, which corroborated Mr. Bernovsky's statements regarding incentives not being the main market driver.[23]

B. The Commission should not defer to CRS as SEIA implies.

Further, SEIA implies that the Commission should defer its judgment to that of CRS because apparently "Arizona's solar market functions as part of a broader national and international market where RECs are bought and sold."[24] The Companies do not concede to this characterization of Arizona's solar market; even so, the Commission's role is not to buttress value in RECs for a voluntary market at the expense of ratepayers. Further, CRS's concerns are

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[22] APS is in compliance with its residential DE requirement through 2016 and its commercial DE requirement through 2020. See Tr. (Bernovsky) at 101, 103, 138. TEP is in compliance for the next six years with its commercial DE requirement. Tr. (Tilghman) at 225-26.

[23] See Tr. (Tilghman) at 181.

[24] See SEIA's Post Hearing Brief at 10.

addressed if the language is clear about when utilities can claim RECs or "renewable attributes" toward compliance with a renewable energy standard, and when they cannot.[25] Staff has explicitly indicated what can be claimed under Track and Monitor (*i.e.*, only RECs acquired by the utility).

C. SEIA mischaracterizes Track and Monitor

Finally, SEIA mischaracterizes Staff's Track and Monitor by stating that Staff's proposal would use energy for compliance purposes.[26] SEIA is incorrect. Track and Monitor does not force DE system owners to give up their RECs absent a transfer. It also does not allow utilities to use kWhs to meet compliance absent the associated "REC" as defined in the REST Rules. Further, assertions that the RECs or the "renewable attributes" become "virtually worthless" if Track and Monitor is adopted are unsupported.

7. Response to NRG Solar LLC.

A. Track and Monitor can and should be adopted in this proceeding; further, CRS should not have "the last word" on renewable energy policy in Arizona.

The Companies disagree with NRG Solar that Track and Monitor double counts – for all of the reasons previously stated. The Companies also do not agree that RECs have some inherent economic value as NRG Solar contends.[27] For example, APS testified that the book value of RECs generated from DE resources is zero.[28] Further, the Companies disagree that CRS "unequivocally believed" that Track and Monitor double counts, for CRS's Executive Director testified she was not 100% sure what Staff's proposal actually was.[29] But NRG Solar, like SEIA, wants the Commission to defer to CRS as having "the last word" on the double-counting issue (for commercial DE at least).[30] The Companies disagree that this is, or even should be, the case.

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[25] See Tr. (Martin) at 860.
[26] See SEIA's Post-Hearing Brief at 13.
[27] See NRG Solar's Initial Brief at 4.
[28] Tr. (Bernovsky) at 161.
[29] Tr. (Martin) at 822.
[30] NRG Solar's Initial Brief at 9.

In fact, now is the time for CRS to examine compliance markets in Arizona and adopt their guidelines accordingly and to acknowledge the presence of such markets.[31] Even so, a full waiver of the DE requirement, decided on a year-to-year basis, that is permanent for that year, would be acceptable to the Companies (as a temporary measure pending reopening of the REST Rules and eliminating the DE requirement.)[32]

8. Response to Kevin Koch's Opening Brief.

It does not appear Mr. Koch takes a strong position on any of the proposals except that he opposes reopening the REST Rules. The Companies response to Mr. Koch's opposition is that just because a rulemaking may be long and arduous does not mean justification does not exist for undertaking such a process – if in the public interest to do so. The Companies have stated their case why the Commission should reopen the REST Rules and eliminate the DE requirement and rest on their arguments previously stated.

9. Response to Wal-Mart Stores Inc., and Sam West, Inc. ("Wal-Mart").

Wal-Mart also appears to oppose Track and Monitor – although their witness appeared to indicate during the hearing that Staff's proposal had some merit.[33] The Companies have stated their case in support of Track and Monitor numerous times and will not repeat it again here. Wal-Mart also opposes removing the DE requirement because the Commission then cannot react to changing market conditions.[34] In response, just because the DE requirement is eliminated does not mean the Commission could not take other actions to spur DE development should such changes occur. The Commission has options available to encourage DE regardless of the existence of any specific "DE carveout" should DE market activity become insufficient.

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[31] As indicated in the Companies' Initial Post-Hearing Brief at 15, CRS has not updated its guidelines to reflect Arizona's REST Rules.

[32] The Companies discuss this option in some detail at 25-26 of their Initial Post-Hearing Brief. The Companies also find Staff's modification to Track and Monitor, where a full waiver would be permanently granted on a year-by-year basis, acceptable. See Companies Initial Post-Hearing Brief at 8.

[33] Compare Tr. (Baker) at 371-72 to Wal-Mart Initial Closing Brief at 4.

[34] Wal-Mart Initial Closing Brief at 3.

III. CONCLUSION.

The Companies request that the Commission: (1) approve Staff's Track and Monitor proposal in this proceeding; and (2) reopen the REST Rules for the express purpose of removing the DE requirement set forth in A.A.C. R14-2-1805.

RESPECTFULLY SUBMITTED this 13th day of September 2013.

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